

EXHIBIT A

VINCENT ROSENBALM

5/17/08

2100 NAPA VALLEJO HIGHWAY WnTS

NAPA, CALIFORNIA 94558

SUPREME COURT OF CALIFORNIA

VINCENT ROSENBALM

3

V

INEFFECTIVE

ASSISTANCE OF COUNSEL

ED FOULK-NAPA STATE HOSPITAL

COURT OF APPEAL

FIRST APPELLATE DISTRICT

CASE NO: A116597

INEFFECTIVE ASSISTANCE OF COUNSEL

JULIA SPIKES FAILED TO FULFILL HER

DUTIES AS APPOINTED APPELLATE COUNSEL BY

FAILING TO "ARGUE ALL ISSUES THAT ARE ARGUABLE."

People v. Feggans (1967) 67 Cal. 2d 444, 447

[ 62 Cal. Rptr. 419, 432 P. 2d 27 see also People v. Wenpe,

supra., 25 Cal. 3d 436.; People v. Barton supra. 21 Cal.

3d at P. 519 THESE ARE THE ISSUES SHE FAILED TO ARGUE

1) DENIAL OF SPEEDY TRIAL PC 1382

2) DENIAL OF COMPETENCY HEARING PC 1368

3) PERJURY BY DOCTORS AND POLICE

4) DENIAL OF BAIL

5) DENIAL OF DISCOVERY

6) DENIAL OF WITNESSES

7) PC 859 B - 10 DAY PRELIMINARY

8) JUDICIAL MISCONDUCT

9) REFUSAL TO ANSWER HABEAS

10) RETURN OF PROPERTY

11) CHALLENGE TO SEARCH WARRANT

12) MALICIOUS PROSECUTION

FILED

JUL 28 2008

RICHARD W. WIEKING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

13) INTERLOCUTORY ORDER (JUDGE ILLSTON)

THESE ARE JUST A FEW OF THE ISSUES  
I NEEDED ARGUED ON APPEAL. DUE TO  
JULIA SPIKES REFUSAL TO COME SEE ME  
AND FILE MOTIONS I NEEDED FILED I REMAIN  
ILLEGALLY IMPRISONED AND MILLIONS  
OF DOLLARS OF DAMAGE HAVE OCCURRED.  
ANOTHER PATIENT (BILLY CARTER) TOLD ME  
HE IS ALSO HAVING TROUBLE GETTING  
HER TO DO HER JOB!!

SHE FILED MOTIONS OR BRIEFS ON  
ONLY 1 GROUND (MARSON) THE WHOLE  
16 MONTHS OF APPEAL AND REFUSED  
TO COME TALK TO ME AND REFUSED  
TO ARGUE THESE 13 GROUNDS I NEEDED  
ARGUED. DUE TO HER LACK OF JOB  
PERFORMANCE I REMAIN ILLEGALLY  
IMPRISONED. IF SHE WOULD HAVE  
ARGUED THE GROUNDS I WANTED HER  
TO ARGUE I PROBABLY WOULD HAVE  
BEEN RELEASED A YEAR AGO!

A HABEAS PETITIONER NEED NOT ESTABLISH  
THAT HE WAS ENTITLED TO REVERSAL IN  
ORDER TO SHOW PREJUDICE IN THE DENIAL  
OF APPELLATE COUNSEL (PEOPLE V. RHODEN  
[1972] 6 Cal. 3d 519, 524 [99 Cal. Rptr. 751, 492  
P. 2d 1143.] IN RE SMITH supra., 3 Cal. 3d at p. 202)  
IN THE CONTEXT OF THE FACTS OF THOSE



EXHIBIT A  
INEFFECTIVE ASSISTANCE OF COUNSEL page 3

1 CASES, IN SMITH AND RHODEN, SUPRA, OUR -  
2 SUPREME COURT HELD THE INEXCUSABLE  
3 FAILURE OF DEFENDANT'S APPELLATE  
4 COUNSEL TO RAISE CRUCIAL ASSIGNMENTS  
5 OF ERROR, WHICH ARGUABLY MIGHT HAVE  
6 RESULTED IN A REVERSAL, DEPRIVED  
7 THE PETITIONER OF THE EFFECTIVE ASS-  
8 ISTANCE OF APPELLATE COUNSEL TO WHICH  
9 HE WAS ENTITLED UNDER THE CONSTITUTION.

10 JULIA SPIKES MADE AN INEXCUSABLE  
11 ERROR BY FAILING TO RAISE GROUNDS  
12 NEEDED TO END MY CASE AND GRANT  
13 ME PROPER RETRIBUTION FOR DAMAGES  
14 DONE. A SIMPLE WRIT OF MANDATE  
15 MAY BE NEEDED TO END THE CORRUPTION  
16 AND MALICIOUS PROSECUTION. IT IS BAD  
17 ENOUGH THE COURT AND POLICE HAVE  
18 COMMITTED HUNDREDS OF CRIMES  
19 AGAINST ME AND MY PROPERTY, BUT  
20 TO HAVE A LAWYER (JULIA SPIKES) REFUSE  
21 TO COME SEE ME IN CUSTODY, REFUSE TO  
22 GO OVER THE TRANSCRIPTS AND REFUSE  
23 TO ARGUE POINTS I NEED ARGUED  
24 IS INEXCUSABLE. I BELIEVE THIS  
25 CONSTITUTIONAL ERROR IS REVERSIBLE  
26 AND I INTEND TO PURSUE IT ALL  
27 THE WAY TO THE END!

28 I WILL SPEND THE NEXT FEW PAGES

EXHIBIT A  
INEFFECTIVE ASSISTANCE OF COUNSEL PAGE 4

1 BRIEFLY GOING OVER THESE 13 GROUNDS +  
2 14 (MARSDEN).

3 GROUND 1 - SPEEDY TRIAL - I WAS AR-  
4 RESTED ON 10/19/06 AND A COURT ORDER WAS  
5 SIGNED 69 DAYS LATER 12/26/2006 COM-  
6 MITTING ME TO NAPA STATE HOSPITAL.  
7 I DID NOT WAIVE ~~THE~~ TIME AND WAS  
8 NOT TAKEN TO TRIAL IN 60 DAYS; FURTHERMORE  
9 I WAS HELD IN JAIL TILL FEBRUARY 7, 2007  
10 I BELIEVE I SPENT ABOUT 100 DAYS IN  
11 THE COUNTY JAIL WITH NO TRIAL.

12 GROUND 2 - I NEVER HAD A COMPETENCY  
13 HEARING (NO WITNESSES, NO JURY?)

14 GROUND 3 - DOCTOR (WILTSE) AND (ROSOFF)  
15 COMMITTED PERJURY TO DETAIN ME ILLEGALLY  
16 UTAH POLICE OFFICERS (CABRAL) AND  
17 (STARK) COMMITTED PERJURY TO DETAIN  
18 ME ILLEGALLY.

19 GROUND 4 - I HAVE BEEN HELD WITH  
20 NO BAIL FROM 11/13/06. I CONSIDER  
21 THIS CRUEL AND UNLAWFUL PUNISHMENT.

22 GROUND 5 - BOTH JULIA SPIKES AND  
23 LINDA THOMPSON REFUSED ME A FULL  
24 DISCOVERY!

25 GROUND 6 - BECAUSE OF INEFFECTIVE  
26 ASSISTANCE OF COUNSEL I HAVE BEEN  
27 HELD ALMOST 2 YEARS AND DENIED  
28 WITNESSES FOR AND AGAINST.

## INEFFECTIVE ASSISTANCE OF COUNSEL pages

1 NO WITNESSES HAVE BEEN PUT ON THE STAND  
2 TO CROSS-EXAMINE?

3 GROUND 7 - I WAS REFUSED A PRELIMINARY  
4 WITHIN 10 DAYS DUE TO LAWYER  
5 LINDA THOMPSON GOING ON VACATION.  
6 THIS VIOLATES PENAL CODE 859b.

7 GROUND 8 - SEVERAL JUDGES HAVE  
8 COMMITTED JUDICIAL MISCONDUCT IN  
9 THIS CASE!

10 GROUND 9 - JUDGE MAYFIELD REFUSES  
11 TO ANSWER HABEAS CORPUS WRITS  
12 FROM OCTOBER AND NOVEMBER 2006.

13 I BELIEVE THE TRANSCRIPTS FROM  
14 OCTOBER OR NOVEMBER 2006 SAY  
15 THE COURT HAD 60 DAYS TO ANSWER  
16 THOSE WRITS.

17 GROUND 10 - POLICE HAVE STOLEN CASH  
18 AND CHECKS AND OTHER PROPERTY  
19 ILLEGALLY - THIS NEEDS TO BE RETURNED

20 GROUND 11

21 GROUND 11 - AN ILLEGAL SEARCH WARRANT  
22 WAS SERVED BY OFFICER STARK, THIS  
23 NEEDS CHALLENGE.

24 GROUND 12 - PENAL CODE 1447 AND  
25 1191.2 ALLOWS FOR RETRIBUTION FOR  
26 FOR MALICIOUS PROSECUTION.

27 GROUND 13 - ON OR ABOUT MAY 3, 2008  
28 JUDGE ILLSTON ILLEGALLY TERMINATED



INEFFECTIVE ASSISTANCE OF COUNSEL

THE LITIGATION IN BOTH FEDERAL AND  
STATE COURTS WITH AN INTERLOCUTORY  
ORDER, I BELIEVE THIS NEEDS TO BE  
CORRECTED. ON 5/13/2008 I SENT  
A NOTICE OF APPEAL TO THE COURT OF  
APPEAL FIRST APPELLATE DISTRICT TO  
APPEAL CASE A116597 TO THE SUPREME  
COURT OF CALIFORNIA. MY HOPE  
IS MY NEW APPELLATE ATTORNEY WILL  
GO OVER ALL THE TRANSCRIPTS AND  
ARGUE THESE 13 GROUNDS + 14  
THE MARDEN MOTION PROBLEM AS  
THIS ALSO NEEDS TO BE ADDRESSED.

JULIA SPIKES (SBN 201272) HAS  
REFUSED TO ARGUE THESE 13 GROUNDS  
NEEDED TO WIN MY CASE. HER LAZY  
ATTITUDE HAS KEPT ME ILLEGALLY  
IMPRISONED. SHE NEEDS TO ARGUE  
ALL THE GROUNDS AND WORK  
HARDER TO PROPERLY REPRESENT  
HER CLIENTS. ARGUMENT OF 1  
GROUND AND REFUSING TO COME  
TALK TO ME'S LAWYER MISCONDUCT.  
AS FAR AS I AM CONCERNED SHE IS  
"FIRED" I NEED AN ATTORNEY WHO  
CAN GIVE ME 110% AND FIGHT FOR ME!  
UNDER THE PENALTY OF PERJURY THIS  
IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Walter D. ...

EXHIBIT B

AO 442 (Rev. 10/03) Warrant for Arrest

## UNITED STATES DISTRICT COURT

NORTHERN

District of

CALIFORNIA

UNITED STATES OF AMERICA

V.

ED FOULK  
EXECUTIVE DIRECTOR

NAPA STATE HOSPITAL

To: The United States Marshal  
and any Authorized United States Officer

## WARRANT FOR ARREST

STATE SUPREME COURT NO: S163898

Case Number:

YOU ARE HEREBY COMMANDED to arrest

ED FOULK

Name

and bring him or her forthwith to the nearest magistrate judge to answer a(n)

☐ Indictment  
 ☐ Information  
 ☒ Complaint  
 ☐ Order of court  
 ☐ Probation Violation Petition  
 ☐ Supervised Release Violation Petition  
 ☐ Violation Notice

charging him or her with (brief description of offense) KIDNAPPING

MY COURT ORDER, or COMMITMENT ORDER WAS  
 VACATED 7/9/08. ED FOULK HAS FAILED TO RELEASE ME  
 AND I HAVE BEEN HELD MORE THAN 15 DAYS  
 WITH NO CHARGES. THIS AMOUNTS TO KIDNAPPING.  
 I BELIEVE ED FOULK IS IN CONTEMPT OF COURT.

in violation of Title 18 United States Code, Section(s)

242

Name of Issuing Officer

Signature of Issuing Officer

Title of Issuing Officer

Date and Location

## RETURN

This warrant was received and executed with the arrest of the above-named defendant at

DATE RECEIVED

NAME AND TITLE OF ARRESTING OFFICER

SIGNATURE OF ARRESTING OFFICER

DATE OF ARREST

EXHIBIT B

AO 442 (Rev. 10/03) Warrant for Arrest

**THE FOLLOWING IS FURNISHED FOR INFORMATION ONLY:**

DEFENDANT'S NAME: \_\_\_\_\_

ALIAS: \_\_\_\_\_

LAST KNOWN RESIDENCE: \_\_\_\_\_

LAST KNOWN EMPLOYMENT: \_\_\_\_\_

PLACE OF BIRTH: \_\_\_\_\_

DATE OF BIRTH: \_\_\_\_\_

SOCIAL SECURITY NUMBER: \_\_\_\_\_

HEIGHT: \_\_\_\_\_ WEIGHT: \_\_\_\_\_

SEX: \_\_\_\_\_ RACE: \_\_\_\_\_

HAIR: \_\_\_\_\_ EYES: \_\_\_\_\_

SCARS, TATTOOS, OTHER DISTINGUISHING MARKS: \_\_\_\_\_

FBI NUMBER: \_\_\_\_\_

COMPLETE DESCRIPTION OF AUTO: \_\_\_\_\_

INVESTIGATIVE AGENCY AND ADDRESS: \_\_\_\_\_



## EXHIBIT C

VINCENT ROSENBAUM

7/24/08

2100 NAPA VALLEJO HIGHWAY

NAPA, CALIFORNIA 94558

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

VINCENT ROSENBAUM } HABEAS CORPUS

V }

CASE NO. CV08-3436

ED FOULK }

SUPPLEMENTAL TO

THOMAS ALLMAN }

THIS CASE

AS OF JULY 24, 2008 I HAVE BEEN  
HELD 16 DAYS WITH NO CHARGES AT  
NAPA STATE HOSPITAL BY ED FOULK.  
THIS VIOLATES PENAL CODE 1382(a) AND  
GOOD CAUSE WAS NOT SHOWN IN 15 DAYS.  
YOU MUST RELEASE ME FROM ILLEGAL  
CUSTODY. I AM SENDING YOU AN ARREST  
WARRANT FOR ED FOULK (KIDNAPPING)

ORIGINAL CASE MUKCRCRC06-74005 WAS  
ARRAIGNED 10/23/06 AND COMMITTED 12/26/06  
NO PRELIMINARY WAS HAD WITHIN 60  
DAYS - PENAL CODE 859b (DISMISSAL).

JUDGE CINDEE MAYFIELD HAS REFUSED  
TO ANSWER A HABEAS CORPUS WIT FROM  
10/23/06 IN VIOLATION OF ARTICLE VI SECTION  
19 OF THE STATE CONSTITUTION.

UNDER THE PENALTY OF PERJURY THIS IS  
TRUE AND CORRECT TO THE BEST OF  
MY KNOWLEDGE. Vincent Rosenbaum

EXHIBIT C

MC-270

ATTORNEY OR PETITIONER WITHOUT ATTORNEY (Name and Address): <b>VINCENT ROSENBAUM (707) 255-9700</b> <b>2100 NAPA VALLEJO HIGHWAY</b> <b>NAPA, CALIFORNIA 94558</b> PETITIONER'S BIRTH DATE: <b>11/28/59</b>		TELEPHONE NO.:	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>NAPA</b> <b>825 BROWN STREET</b> <b>NAPA, CALIFORNIA 94559</b>			
IN THE MATTER OF (NAME): <b>VINCENT ROSENBAUM</b>		Petitioner	CASE NUMBER: <b>SURREMECOURT NO:</b> <b>5163898</b>
PETITION FOR WRIT OF HABEAS CORPUS—Penal Commitment			

1. Petitioner is being unlawfully restrained of liberty at (specify name of treatment facility): **NAPA STATE Hospital**  
 by (specify name of persons having custody, if known): **ED FOLK**
2. Petitioner was admitted to the treatment facility on (date): **2/7/07** and is currently being held pursuant to:
- ☐ Penal Code § 1026 (not guilty by reason of insanity) ☐ Penal Code § 1026.5(b) (extended commitment)
- ☐ Penal Code § 1370 (incompetent to stand trial) ☐ Penal Code § 2684 (prisoners transferred to state hospital)
- ☐ Penal Code § 2962 (mentally disordered offender) ☐ Former W & I § 6300 (MDSO)
- ☒ Other (specify): **ILLEGAL IMPRISONMENT**
3. Check at least one box:
- a. ☒ Petitioner is illegally confined for the following reason: **KIDNAPPING ED FOLK**  
**ON 7/19/08 MY COMMITMENT WAS VACATED CASE NO. 5163898**  
**I HAVE BEEN HELD MORE THAN 15 DAYS (NO CHARGES)**  
**SEE PENAL CODE 1382(A) GOOD CAUSE NOT SHOWN**  
**YOU MUST RELEASE ME FROM ILLEGAL CUSTODY**
- b. ☒ Petitioner has been denied the following rights without good cause (Penal Code section 2600):  
**ARRAIGNED 10/23/06 COMMITTED 12/26/06**  
**NO PRELIMINARY IN 60 DAYS - AUTOMATIC DISMISSAL**  
**PENAL CODE 859.6 - GROUNDS FOR ~~DISMISSAL~~ DISMISSAL**  
**JUDGE MAYFIELD HAS NOT ANSWERED HABEAS OVER 600 DAYS**
4. Petitioner has no adequate and speedy remedy at law. **Article VI Sect 19**
5. Have you made any previous requests for relief from this confinement? **YES** If your answer is yes, state the nature and grounds for your request, the date it was made, and the result:  
**HUNDREDS OF MATTERS PENDING**  
**THIS IS TO BE INCLUDED IN FEDERAL Habeas CASE NO. 08-3436**
6. Petitioner requests that this court (check all that apply):
- a. ☒ Issue a Writ of Habeas Corpus to the director of the facility named in item 1, commanding that the petitioner be brought before this court at a specified time and place.
- b. ☒ Order the facility personnel to release petitioner from said restraint.
- c. ☒ Order that all rights to which petitioner is entitled as a patient be observed.
- d. ☒ Grant such other relief as this court deems appropriate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

**7/24/08**

(TYPE OR PRINT NAME)

**Vincent Rosenbaum**

(SIGNATURE OF PETITIONER OR PERSON REQUESTING WRIT ON PETITIONER'S BEHALF)

Page 1 of 1

EXHIBIT C

MC-270

ATTORNEY OR PETITIONER WITHOUT ATTORNEY (Name and Address): VINCENT ROSENBAUM (707) 255-9700 2100 NAPA VALLEJO HIGHWAY NAPA, CALIFORNIA 94558		TELEPHONE NO.: 707-255-9700	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MENDOCINO 100 N. STATE STREET UKIAH, CALIFORNIA 95482		PETITIONER'S BIRTH DATE: 11/28/59	
IN THE MATTER OF (NAME): VINCENT ROSENBAUM		Petitioner	CASE NUMBER: SUPREME COURT NO. 5163898
PETITION FOR WRIT OF HABEAS CORPUS—Penal Commitment			

1. Petitioner is being unlawfully restrained of liberty at (specify name of treatment facility): NAPA STATE HOSPITAL  
by (specify name of persons having custody, if known):

2. Petitioner was admitted to the treatment facility on (date): 2/7/07 and is currently being held pursuant to:

- ☐ Penal Code § 1026 (not guilty by reason of insanity)    ☐ Penal Code § 1026.5(b) (extended commitment)  
☐ Penal Code § 1370 (incompetent to stand trial)    ☐ Penal Code § 2684 (prisoners transferred to state hospital)  
☐ Penal Code § 2962 (mentally disordered offender)    ☐ Former W & I § 6300 (MDSO)  
☒ Other (specify): ILLEGAL IMPRISONMENT

3. Check at least one box:

- a. ☒ Petitioner is illegally confined for the following reason: KIDNAPPING (ED FOLK)  
ON 7/9/08 MY COMMITMENT WAS VACATED CASE NO: 5163898  
I HAVE BEEN HELD MORE THAN 15 DAYS (NO CHARGES)  
SEE PENAL CODE 1382(G) GOOD CAUSE NOT SHOWN  
YOU MUST RELEASE ME FROM ILLEGAL CUSTODY

- b. ☒ Petitioner has been denied the following rights without good cause (Penal Code section 2600):  
ARRAIGNED 10/23/06 COMMITTED 12/26/06  
NO PRELIMINARY IN 60 DAYS - AUTOMATIC DISMISSAL  
PENAL CODE 859B - GROUNDS FOR DISMISSAL  
JUDGE MAYFIELD HAS NOT ANSWERED HABEAS OVER 600 DAYS

4. Petitioner has no adequate and speedy remedy at law.

ARTICLES VI SEC 19

5. Have you made any previous requests for relief from this confinement? YES If your answer is yes, state the nature and grounds for your request, the date it was made, and the result:

HUNDREDS OF MATTERS PENDING

THIS IS TO BE INCLUDED IN FEDERAL HABEAS CASE NO: CV08-3436

6. Petitioner requests that this court (check all that apply):

- ☒ Issue a Writ of Habeas Corpus to the director of the facility named in item 1, commanding that the petitioner be brought before this court at a specified time and place.  
☒ Order the facility personnel to release petitioner from said restraint.  
☒ Order that all rights to which petitioner is entitled as a patient be observed.  
☒ Grant such other relief as this court deems appropriate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

7/24/08

(TYPE OR PRINT NAME)

Vincent Rosenbaum

(SIGNATURE OF PETITIONER OR PERSON REQUESTING WRIT ON PETITIONER'S BEHALF)

Page 1 of 1



EXHIBIT C

VINCENT ROSENBAUM

7/24/08

2100 NAPA VALLEJO HIGHWAY

NAPA, CALIFORNIA 94558

(707) 255-9700

MENDOCINO COUNTY SUPERIOR COURT

PEOPLE OF THE STATE } 859(b) MOTION

OF CALIFORNIA }

V }

CASE NO: MC0K0R06-74005

VINCENT ROSENBAUM }

I HEREBY GIVE NOTICE TO MENDOCINO COUNTY SUPERIOR COURT YOU HAVE VIOLATED PENAL CODE 859(b) BY REFUSING ME A PRELIMINARY HEARING IN 60 DAYS. I WAS ARRAIGNED ON 10/23/06 AND COMMITTED 12/26/06. NO GOOD CAUSE WAS SHOWN TO HOLD A PRELIMINARY PAST 60 DAYS, AND CAUSE FOR DISMISSAL OF CRIMINAL CHARGES. I ASK THE COURT FOR RELEASE FROM ILLEGAL IMPRISONMENT.

UNDER THE PENALTY OF PERJURY THIS IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Vincent Rosenbaum

EXHIBIT C

VINCENT ROSENBALM

7/24/08

2100 NAPA VALLEJO HIGHWAY

NAPA, CALIFORNIA 94558

NAPA COUNTY SUPERIOR COURT

§ 1382. MOTION

VINCENT ROSENBALM

} DENIAL OF SPEEDY

V

} TRIAL

ED FOULK

} SUPREME COURT OF

} CALIFORNIA CASE NO. S163898

MY COMMITMENT ORDER TO NAPA STATE HOSPITAL WAS VACATED ON JULY 9, 2008. ED FOULK - EXECUTIVE DIRECTOR OF NAPA STATE HOSPITAL HAD 15 DAYS TO RELEASE ME FROM CUSTODY. HE IS IN CONTEMPT OF COURT AS OF JULY 24, 2008 WHICH IS 16 DAYS AFTER MY COMMITMENT WAS VACATED. I ASK FOR RETRIBUTION FROM VICTIM WITNESS AND RELEASE FROM ILLEGAL CUSTODY. PENAL CODES 1191.2, 1447 AND 1202.4 (K)(2), 1202.4 (F)(3)(H), 1202.4 (F)(3)(G) PENAL CODE 1382 (a) - 15 DAYS OR DISMISSAL. GOOD CAUSE WAS NOT SHOWN IN 15 DAYS. UNDER THE PENALTY OF PERJURY THIS IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Vincent Rosenbalm

*EXHIBIT D*

Court of Appeal, First Appellate District, Div. 5 - No. A116597  
S163898

**IN THE SUPREME COURT OF CALIFORNIA**

**En Banc**

---

THE PEOPLE, Plaintiff and Respondent,

v.

VINCENT LEE ROSENBALM, Defendant and Appellant.

---

The petition for review is denied.

*JULY 9th*

SUPREME COURT  
**FILED**

JUL - 9 2008

Frederick K. Ohlrich Clerk

\_\_\_\_\_  
Deputy

\_\_\_\_\_  
GEORGE  
Chief Justice



EXHIBIT D

COPY

Filed 04/03/08

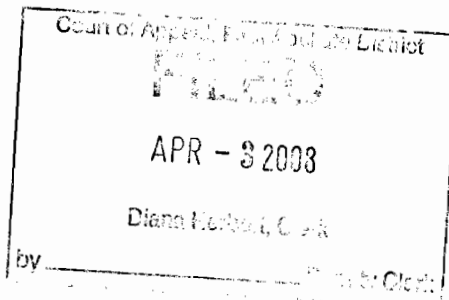
**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

## FIRST APPELLATE DISTRICT

## DIVISION FIVE

**THE PEOPLE,****Plaintiff and Respondent,****v.****VINCENT LEE ROSENBALM,****Defendant and Appellant.****A116597****(Mendocino County Super. Ct.  
No. MCUK-CRCR-06-74005)**

Vincent Lee Rosenbalm appeals an order committing him to a state hospital (Pen. Code, § 1370)<sup>1</sup> after he was found incompetent to proceed with trial on a charge of making a criminal threat (§ 422). He contends, and the People concede, the court erred in refusing to conduct a *Marsden* hearing (*People v. Marsden* (1970) 2 Cal.3d 118). We agree the court erred in refusing to conduct a *Marsden* hearing and conclude the error is prejudicial.

**BACKGROUND<sup>2</sup>**

Ukiah police served a search warrant on appellant's home and seized items while investigating an internet counterfeit check scheme. Appellant became upset because he believed the items were seized illegally. He was charged with making a criminal threat

<sup>1</sup> All undesignated section references are to the Penal Code.

<sup>2</sup> The background facts are taken from the reports of Drs. Douglas Rosoff and Kevin Kelly.

after mailing letters to Ukiah Police Captain Dan Walker in September and October 2006, which Walker perceived as becoming progressively more threatening.

Drs. Rosoff and Kelly both found that appellant would be unable to assist his counsel in the preparation of his defense and unable to conduct his own defense, and found him incompetent to stand trial because of his delusional disorder.

#### **DISCUSSION**

Appellant contends the court erroneously refused to conduct a *Marsden* hearing on his request for substitute counsel. He argues that at a minimum, the matter should be remanded for the court to conduct a *Marsden* hearing. The People concede the error but argue his due process rights were not violated, there was no prejudice, and therefore the error was harmless.

At appellant's October 23, 2006 arraignment, the court (Judge Mayfield) advised him of his right to counsel and asked if he wanted counsel appointed for him. Appellant responded that he had a plea and writ of habeas corpus, that his case would be dismissed that day, and said "I don't want an attorney today." Appellant then submitted his habeas corpus petition to the court, and he was advised that a judicial officer has up to 60 days to make a determination on the petition and that the petition would not be ruled on that day. The court also told appellant it would not address his concerns about matters which occurred in 2004, stated it had some concerns about his ability to proceed and was considering ordering a section 4011.6 evaluation. When appellant said he was having problems at the jail the court said, "sounds like you could benefit from having an attorney represent you. You are absolutely entitled under the Sixth Amendment." Appellant responded that he wanted a change of venue because his habeas petition would not be heard that day, and offered to enter a plea. The court denied the request for change of venue, said it would consider appellant's habeas petition following the hearing, and said appellant could represent himself or counsel could be appointed for him. After appellant said he wanted several public defenders, the court appointed public defender Linda Thompson to represent him. Thereafter, the prosecutor and the court expressed concern regarding appellant's competency and the court sought Thompson's comments on

imposing a 72-hour hold and evaluation under section 4011.6. Thompson acknowledged there was “some question” as to appellant’s mental state but said given his apparent ability to discuss underlying factors, she was unprepared to suggest a section 1368 competency evaluation. After the court denied appellant’s request to be released on his own recognizance, Thompson said appellant would enter a not guilty plea. Appellant disagreed that that would be his plea, and said he wanted review of his habeas petition. He then requested a *Marsden* hearing, told Thompson she was “fired,” and asked for a *Marsden* hearing “right now.” The court then suspended the proceedings and ordered Drs. Kelly and Rosoff to evaluate appellant’s competency. Appellant again asked for a *Marsden* hearing, and Thompson and the prosecutor advised the court that given the suspension of the proceedings, the competency evaluation would have to occur before a *Marsden* hearing. The court set a hearing for November 13.

At the commencement of the November 13, 2006 hearing, appellant stated he had not yet seen Dr. Kelly. Thompson requested that the court order appellant to see Dr. Kelly and stated she believed appellant was incompetent. Appellant stated he had “fired” Thompson three weeks before. The court stated that Thompson was appellant’s attorney of record and would remain so pending further proceedings, and that no *Marsden* hearing would be held until receipt of the reports from Drs. Kelly and Rosoff.

At the next hearing on November 27, 2006, the court received the reports of Drs. Kelly and Rosoff. When Thompson stated she would stipulate to the admission of both reports, appellant said she was not his lawyer and asked to have a *Marsden* hearing. The court stated it found appellant not competent to proceed and that the criminal proceedings would remain suspended. Thompson and the court discussed a date for a mental health placement evaluation, and the court set the matter for December 18.

At the commencement of the December 18, 2006 placement recommendation hearing, appellant requested a *Marsden* hearing. The matter was continued to December 21. At the December 21 hearing presided over by Judge Brown, appellant again requested a *Marsden* hearing. When the court stated it would “give that to [him],” Thompson explained that the criminal proceedings were suspended, appellant had been



found incompetent and the hearing was for purposes of placement. The court adopted the recommendation of the Golden Gate Conditional Release Program and ordered appellant transported to Napa State Hospital. When appellant again requested a *Marsden* hearing, the court said he was represented by counsel and his request for a *Marsden* hearing had been denied. Appellant filed a timely appeal from the commitment order.

“A person cannot be tried or adjudged to punishment . . . if, as a result of mental disorder or developmental disability, the defendant is unable to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a rational manner.” (§ 1367, subd. (a); *People v. Solorzano* (2005) 126 Cal.App.4th 1063, 1068-1069.) “[W]hile the trial court may not ‘proceed with the case against the defendant’ before it determines his competence in a section 1368 hearing [citation], it may and indeed *must* promptly consider a motion for substitution of counsel when the right to effective assistance ‘would be substantially impaired’ if his request were ignored. [Citation.]” (*People v. Stankewitz* (1990) 51 Cal.3d 72, 88; *Solorzano*, at p. 1069.) “Even though ‘section 1368 mandates the suspension of “ ‘all proceedings in the criminal prosecution’ ” once the court has ordered a hearing into the mental competence of the defendant,’ the Supreme Court held, ‘the Sixth Amendment right to effective representation compels a hearing and an order granting a motion for substitution of counsel when there is a sufficient showing that the defendant’s right to the assistance of counsel will be substantially impaired if his request is denied. [(*Stankewitz*, at pp. 87-88.)]’ [Citations.]” (*Solorzano*, at p. 1069.) “Hearing a *Marsden* motion during a competency hearing does not reinstate criminal proceedings against the defendant.” (*Solorzano*, at p. 1069, citing *Stankewitz*, at p. 88.)

“A defendant is entitled to have appointed counsel discharged upon a showing that counsel is not providing adequate representation or that counsel and defendant have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result. [Citations.]” (*People v. Jones* (2003) 29 Cal.4th 1229, 1244-1245.) “ “ “ ‘When a defendant seeks to discharge appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant

to explain the basis of his contention and to relate specific instances of the attorney's inadequate performance.' " " " ( *People v. Welch* (1999) 20 Cal.4th 701, 728.) A trial court's refusal to relieve appointed counsel is reviewed under the deferential abuse of discretion standard. ( *Jones*, at p. 1245.)

The parties agree the court abused its discretion in failing to conduct a *Marsden* hearing; our attention is directed to the question of prejudice. *Marsden* error is reviewed for prejudice under the *Chapman v. California* (1967) 386 U.S. 18 "beyond a reasonable doubt" standard. ( *Solorzano*, *supra*, 126 Cal.App.4th at p. 1071.)

Appellant contends that because he was not permitted to disclose the factual nature of his dissatisfaction with his counsel, Thompson, it cannot be concluded beyond a reasonable doubt that the denial of his *Marsden* motion was not prejudicial. He asserts that had the court promptly addressed his concerns regarding defense counsel, a competency hearing might have been unnecessary, since his request to enter his own "novel" plea was the sole reason Thompson expressed concern about his competency. He also argues that the court's repeated refusals to hold a *Marsden* hearing "likely contributed to and exacerbated [his] belief that courts and its officers could not be trusted." Appellant cites *Solorzano*, which in turn quoted *Marsden* regarding prejudice: " "On this record we cannot ascertain that [Solorzano] had a meritorious claim, but that is not the test. Because [he] might have catalogued acts and events beyond the observations of the trial judge to establish the incompetence of his counsel, the trial judge's denial of the motion without giving [him] an opportunity to do so denied him a fair trial. We cannot conclude beyond a reasonable doubt that this denial of the effective assistance of counsel did not contribute [to the finding that he was competent to stand trial.]" " ( *Solorzano*, *supra*, 126 Cal.App.4th at p. 1071, quoting *Marsden*, *supra*, 2 Cal.3d at p. 126.)

The People present a two-fold argument that appellant was not prejudiced by the court's refusal to conduct a *Marsden* hearing. First, none of the complaints expressed by appellant in open court pertained to Thompson's conduct in connection with the competency proceedings. Instead, the complaints focused on his detention following the

seizure of items from his home two years previously. Second, except for a 15-minute private conference between Thompson and appellant before appellant attempted to enter a plea, all contact between appellant and Thompson was observed by the court. Thus, the argument runs, this was not a case of a silent record or speculation by the trial court. The People argue that appellant's claim that he was denied a *Marsden* hearing can be cured by reasserting that motion at a subsequent proceeding when he is restored to competency and the court reinstates criminal proceedings against him.<sup>3</sup>

The People's twofold argument is entirely speculative. Based on the record before us, we cannot conclude beyond a reasonable doubt that had a timely *Marsden* hearing been held a commitment order would nevertheless have resulted. The commitment order is vacated.<sup>4</sup>

#### DISPOSITION

The commitment order is vacated and the matter remanded with the following directions: (1) the court shall hold a hearing on appellant's *Marsden* motion concerning Thompson; (2) if appellant prevails on his *Marsden* motion, the court shall appoint new counsel to assist him for this purpose and shall entertain such applications as newly appointed counsel may make; and (3) if newly appointed counsel does not make any motions, any motions made are denied, or appellant's *Marsden* motion is denied, the court shall reinstate the commitment order.

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<sup>3</sup> This suggestion flies in the face of *Stankewitz* and *Solorzano*, which recognize that despite a section 1368 suspension of criminal proceedings, the court must promptly consider a *Marsden* motion when the right to effective assistance would be substantially impaired if the request were ignored.

<sup>4</sup> In light of this conclusion, we need not address appellant's claim of ineffective assistance of counsel.



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SIMONS, J.

We concur.

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JONES, P.J.

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STEVENS, J.\*

(A116597)

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\* Retired Associate Justice of the Court of Appeal, First District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

EXHIBIT E

7/24/08

1 U. S. DISTRICT COURT CASE NO: CV08-3436

2 TO COURT CLERK RICHARD WIEKING,

3 MY COURT COMMITMENT ORDER

4 HAS BEEN VACATED AND I SENT

5 YOU COPIES FROM THE COURT OF APPEAL

6 (STATE) AND SUPREME COURT OF CALIF

7 THESE ORDERS. THE PROBLEM IS ED

8 FOULK REFUSES TO OBEY THESE

9 ORDERS AND HAS HELD ME MORE

10 THAN 15 DAYS (SEE PENAL CODE 1382(a))

11 AND NO GOOD CAUSE WAS SHOWN

12 WITHIN 15 DAYS VIOLATING MY

13 DUE PROCESS. TODAY IS 7/24/08

14 16 DAYS BEYOND MY NOTICE TO

15 VACATE MY COMMITMENT ORDER;

16 WHICH IS 81 OF 60 FOR SPEEDY TRIAL.

17 I SENT YOU AN ARREST WARRANT

18 FOR ED FOULK FOR KIDNAPPING.

19 HE IS THE EXECUTIVE DIRECTOR

20 OF NAPA STATE HOSPITAL AND HE

21 NEEDS TO BE ARRESTED FOR

22 HOLDING ME ILLEGALLY.

23 UNDER THE PENALTY OF PERJURY

24 THIS IS TRUE AND CORRECT TO

25 THE BEST OF MY KNOWLEDGE.

26  
27 Vincent Rosenbaum  
28

VINCENT ROSENBALM

7/24/08

2100 NAPA VALLEJO HIGHWAY

NAPA, CA 94558

(707) 255-9700

MENDOCINO COUNTY SUPERIOR COURT

PEOPLE OF THE STATE } 170.6 MOTION

OF CALIFORNIA } TO REUSE A JUDGE

v

} DISQUALIFICATION

VINCENT ROSENBALM } CASE NO: MCURCRCR06-74005

I AM VINCENT ROSENBALM

AND I CANNOT HAVE A FAIR

TRIAL BEFORE JUDGE MAYFIELD

DUE TO PREJUDICE. SHE HAS

REFUSED TO ANSWER A HABEAS

CORPUS WRIT FOR OVER 600 DAYS

FROM 10/23/06 IN VIOLATION

OF ARTICLE VI SECTION 19 OF

THE STATE CONSTITUTION. UNDER

PENALTY OF PERJURY THIS IS

TRUE AND CORRECT TO THE BEST

OF MY KNOWLEDGE.

Vincent Rosenbalm



## PROOF OF SERVICE 7/24/08

I am Vincent Rosenbalm an American citizen over 18 years of age.

U.S. DISTRICT CASE NO: CV08-3436 SE

ON 7/24/08 I served the within

- 1) EXHIBIT A - INEFFECTIVE COUNSEL
- 2) EXHIBIT B WARRANT FOR ARREST
- 3) EXHIBIT C (5) PAGES HABEAS SUPPLEMENTAL
- 4) EXHIBIT D - STATE COURT (JUDGMENT)
- 5) EXHIBIT E - (2) Letters COURT

By placing a copy in the Napa State Hospital Mail Addressed to:  
COURT CLERK

U.S. DISTRICT COURT

450 GOLDENGATE AVE

SAN FRANCISCO, CA 94102

From

Vincent Rosenbalm

2100 Napa Valleso Highway

Napa, CA 94558

Under the Penalty of Perjury  
this is true and correct  
to the best of my knowledge.

Vincent Rosenbalm

